

BULK USER AGREEMENT
BETWEEN
GEORGIA TECHNOLOGY AUTHORITY
AND

This Bulk User Agreement ("Agreement") is entered into by and between the GeorgiaNet Division of the Georgia Technology Authority, hereinafter referred to as "GTA," and _____, hereinafter referred to as "Bulk User," with its principal office at:

GTA and Bulk User shall be collectively referred to as the "parties."

WHEREAS, pursuant to O.C.G.A. § 40-5-2, GTA has the authority to contract for the electronic delivery of certain records maintained and compiled by the Georgia Department of Driver Services ("DDS") for certain specific statutory purposes; and

WHEREAS, Bulk User desires to obtain abstracts of multiple driver records of individuals licensed by the DDS for specific uses related to motor vehicle insurance, extension or modification of credit, or employment information verification as allowed under all applicable laws, rules, and regulations;

NOW THEREFORE, in consideration of the promises and agreements hereinafter set forth, the parties hereby agree as follows:

1. Purpose

The purpose of this Agreement is to set out the terms and conditions under which GTA will disclose to Bulk User certain information contained within the official driver records maintained and compiled by the DDS. The use of said driver record information shall be exclusively in connection with:

- (i) claims investigation, antifraud activities, rating, or underwriting of motor vehicle, including rental car, insurance; or
- (ii) verification of information provided by the individual whose record is being requested pursuant to a credit agreement; or,
- (iii) verification of information provided by the individual whose record is being requested as part of an employment process.

Information released to the Bulk User under this Agreement is subject to limitations imposed by O.C.G.A. § 40-5-2, the rules and regulations promulgated by the DDS, 18 U.S.C. § 2721, laws related to personal information security and notification, and the provisions set forth within this Agreement. Such limitations include, but are not limited to, any written authorizations or consents required by the DDS or by law.

2. Definitions

- a. "MVR" or "Motor Vehicle Record" or "Record" shall mean the applicable abstract of an individual Driver's Record electronically delivered to Bulk User under this Agreement. Pursuant to O.C.G.A. § 40-5-2, the contents of the abstract will vary according to the use for which the abstract is requested. The abstract is considered personal information pursuant to 18 U.S.C. § 2721(a)(1).

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- b. "Bulk User" shall mean the entity entering into this Agreement who is designated as a Bulk User by the DDS as evidenced by GTA's receipt of a valid copy of an Agreement between Bulk User and the DDS designating such entity as Bulk User.
- c. The terms "abstract", "Motor Vehicle Reports", and "MVR's" as used in this Agreement have the same meaning as "abstracts of Driver's Operating Record" as used in O.C.G.A §40-5-2 and in the rules and regulations of DDS.

3. License

- a. *License Grant.* During the term of this Agreement, subject to the terms and conditions stated herein, GTA grants Bulk User a nonexclusive, nontransferable limited license to access and retrieve certain MVR's contained in GTA's Database at such times as GTA makes said MVR's available to Bulk User solely for its internal business purposes allowed under O.C.G.A. § 40-5-2 and the rules and regulations promulgated by the DDS and its successors.
- b. *Limitation of License.* Except as specifically provided in subparagraph a. above, no MVR, either in whole or in part may be reused, copied, downloaded, stored, published, transmitted or otherwise disclosed, in any form or by any means, except as Bulk User may be required to retain for a specific period of time by federal or state law without the express written consent of the DDS. Bulk User is hereby restricted from reselling or otherwise providing any retrieved MVR, either in whole or in part, to any third party, except as may otherwise be required by federal or state law, without the express written consent of the DDS.
- c. *Ownership of Records.* Except for the license granted herein, all rights, title and interests in the MVR's in all languages, formats and media throughout the world are and shall continue to be the exclusive property of the DDS.

4. MVR Requests and Obligations

- a. Subject to the terms and conditions set forth in this Agreement, GTA shall provide to Bulk User such MVR's as are properly requested in an electronic format as specified by GTA. MVR's which are not properly requested by Bulk User or which result in the gathering of no information will result in the conditions stated in **Section 10(a)(iii)** below.
- b. Each request for a MVR submitted by Bulk User shall include:
 - (i) the driver's
 - (A) first name exactly as it appears in the license,
 - (B) middle name exactly as it appears in the license,
 - (C) last name exactly as it appears in the license,
 - (D) date of birth, and
 - (E) license number;
 - (ii) use or purpose in requesting the MVR;
 - (iii) length of time for which the MVR is sought (3 or 7 year record); and

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- (iv) the name of the requesting Bulk User.
- c. Any mismatch between the information provided by Bulk User under **Section 5(b)** of this Agreement and the driver information on DDS record constitutes a failure to comply with that Section, and will result in gathering of no information and trigger a **Section 10(a)(iii)** charge.
- d. This Agreement does not grant access to GTA's Web Site for the purpose of accessing any premium online services offered through GTA including, but not limited to, online MVR requests. To gain authorization to access the premium online services via the GTA Web Site, Bulk User must also accept the GTA Terms of Service Agreement which is available on the GTA Web Site.

5. Restrictions on Use of Records

- a. Bulk User shall take all necessary measures to ensure that personal information contained in the MVR's requested and received by Bulk User are exclusively used for one or more of the following enumerated uses and purposes:
 - i. For use in the internal, normal course of business by a legitimate business or its agents, employees, or contractors, but only -
 - (A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - (B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
 - ii. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting of motor vehicle insurance.
 - iii. For verification of information provided by the individual whose record is being requested in connection with a credit transaction involving the individual on whom the information is to be furnished and involving an extension of credit to, or review of account of, the individual.
 - iv. For verification of information provided by the individual whose record is being requested as part of an employment process.
 - v. For use by any licensed private investigative agency or licensed security service for any purpose permitted under O.C.G.A. § 40-5-2, 18 U.S.C. § 2721, and the rules and regulations promulgated by the DDS.
 - vi. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

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All such uses shall be subject to limitations imposed by O.C.G.A. § 40-5-2, 18 U.S.C. §§ 2721-2725, the rules and regulations promulgated by the DDS, and the limitations set forth in this Agreement.

- b. Except as otherwise provided in **Sections 5(a)**, Bulk User may not reuse, disclose, disseminate, distribute, supply, or sell any portion of the MVR data.
- c. Bulk User shall not archive or retain MVR's for any purpose, unless expressly required by law or a law enforcement agency. Bulk User requests and accepts the MVR for one-time use and subsequent disclosure, supply, sale, or offering for sale shall be a violation of this Agreement and may violate applicable laws, rules, and regulations.
- d. Bulk User agrees to promptly and adequately destroy the requested MVR when the MVR is no longer needed for the purpose submitted in **Section 4(b)(ii)** or upon expiration or termination of this Agreement, whichever happens first. Upon request of GTA after expiration or termination, Bulk User shall promptly certify the destruction of all MVR data provided under this Agreement. These obligations do not affect the liability Bulk User retains for the disclosure, resale, or supply of MVR data to third parties under this Agreement.

6. Audit

- a. Bulk User's documentation supporting the reason for the Record request, including but not limited to transaction details, client agreements, computer software and programs maintained for the purposes defined in this agreement, shall be subject to inspection, review or audit by GTA, the DDS or their respective representatives for a period of four years from the date of the request at no cost to GTA or the DDS. Bulk User agrees to accommodate GTA, the DDS or their respective representative's request for an inspection, review or audit on one business day's notice and to allow on-site audits during regular business hours.
- b. Bulk User shall maintain a log containing a record of each request for a MVR for a period of four years from the date of the request. The log shall be immediately available for review by GTA, the DDS, the State Auditor, or their respective representative's request. Bulk User shall provide an electronic or "hard" copy of such log upon request. The log format shall provide the following in the order presented: (i) Date of request, and (ii) all information specified in **Section 4(b)** of this Agreement.

7. Representations and Warranties

- a. Bulk User represents and warrants that it is a Bulk User as designated by the DDS, further evidenced by an Agreement between Bulk User and DDS, transmitted to GTA by the DDS, which is appended to this Agreement as Attachment A.

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- b. Bulk User warrants that it will maintain its Bulk User status by entering into an Agreement with DDS designating Bulk User as such. Bulk User warrants that it will maintain such Agreement as valid and current and will notify GTA ten (10) business days prior to a possible lapsing of DDS Bulk User designation and immediately upon actual lapse. Bulk User acknowledges that their status as a Bulk User is dependent on GTA receiving evidence of such designation from the DDS. Failure to maintain or loss of Bulk User designation for any reason shall be grounds for immediate termination of this Agreement under **Section 8(a)** below.
- c. Bulk User warrants that it shall take all measures necessary to ensure that the MVR's supplied to Bulk User by GTA will not be divulged, supplied, sold, assigned or transferred to anyone.
- d. Bulk User warrants that it shall take all measures necessary to ensure that it will use the MVR's solely for its internal business purposes authorized under all applicable laws, rules, and regulations and will not transfer MVR's to another party.

8. Remedies

- a. Any breach by Bulk User of the representations, warranties, restrictions, terms, requirements, or conditions contained in this agreement constitutes a material breach and shall be grounds for GTA, in its sole discretion, to suspend the services provided by GTA under this Agreement or terminate this Agreement immediately and without notice. Bulk User acknowledges that certain breaches by Bulk User may result in criminal liability.
- b. Bulk User agrees and acknowledges that a breach of material term(s) of this Agreement shall cause immediate and irreparable harm and damage to the State of Georgia, in which event GTA, the DDS and/or the State of Georgia shall be immediately entitled to injunctive relief and a return of all Licensed Records without any reimbursement of any fees or payments, in addition to any other rights and remedies to which it may be entitled, at law or in equity.
- c. If Bulk User does not make timely payments under the provisions of **Section 10** of this Agreement, GTA may terminate this Agreement or suspend the services provided under this Agreement to Bulk User until such time as Bulk User pays the full amount it owes to GTA and this Agreement is reinstated. GTA will charge Bulk User one and one-half percent (1.5%) interest per month on its unpaid balance and may exercise any other remedies provided by law. Bulk User agrees to reimburse GTA for all costs of collection of delinquent accounts, including but not limited to reasonable attorney's fees, as permitted by law.
- d. The remedy of termination of this Agreement or release of GTA from the obligations of the Agreement afforded to GTA under the various provisions of this Agreement shall not be deemed to be an exclusive remedy, but rather shall be in addition to all other remedies which may be available to GTA. Termination of this Agreement shall release GTA from any and all obligations

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under this Agreement, but shall not bar GTA from pursuing any remedies it would otherwise have against Bulk User.

- e. Failure to maintain, or revocation of, an entity's Bulk User designation by the DDS shall be grounds for GTA to immediately, and without further notice, terminate or suspend the services provided under this Agreement.

9. Term

- a. This Agreement will become effective on the date it is signed and accepted by GTA, superseding and replacing any and all existing Agreements with Bulk User for the services and subject matter contained herein.
- b. This Agreement will continue in force until terminated by either party upon thirty (30) days' written notice to the other party or if otherwise terminated under the terms of this Agreement.

10. Charges and Payment Procedures

- a. Bulk User shall compensate GTA according to the following schedule:
 - (i) \$5.00 per request for each three (3) year MVR requested and received
 - (ii) \$7.00 per request for each seven (7) year MVR requested and received
 - (iii) \$3.00 per request for each MVR requested by Bulk User which results in no matches because:
 - (A) the information provided by Bulk User did not meet **Section 4(b)** requirements for accessing MVR data,
 - (B) the request is entered in a format that varies from the format provided by GTA, or
 - (C) GTA server failed to provide the requested information to Bulk User because the requested report is not found in the DDS driver license database.
- b. Each month GTA will send to Bulk User an invoice for all charges incurred by Bulk User during the preceding month, subject to adjustments, if any. Within thirty (30) days of receipt of any invoice, Bulk User must pay to GTA the full amount payable thereunder. If Bulk User does not make timely payment, GTA may exercise the remedies available to it in **Section 8(c)**.
- c. GTA will make an appropriate adjustment to any amount payable by Bulk User for any use of the services which results in faulty retrieval, failure of retrieval, or a loss of retrieved data, except that caused by incorrect or improper use of the services by Bulk User; provided, however, that Bulk User reports to GTA any such loss immediately upon discovery, not to exceed thirty (30) days from the date of the disputed retrieval. Payment to GTA for invoiced services shall deem those services and the data requested to be correct, satisfactory and not subject to adjustment.

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11. Indemnification

- a. Bulk User agrees to indemnify the "State" and to hold it harmless from all loss and liability, in any way caused, in whole or in part, by act or omission of Bulk User in connection with this Agreement.

For purposes of this indemnification,

"State" means the Georgia Technology Authority, the DDS, all other departments and units of the state government, all state instrumentalities, and all their officers and employees, plus the insurance programs of the Department of Administrative Services established for their protection.

"Bulk User" includes successors, and assigns. In the clause, "caused, in whole or in part, by act or omission of Bulk User," "Bulk User" also includes Bulk User's subcontractors, all others acting on their behalf, and their officers and employees.

This obligation survives the expiration and termination of the Agreement, the dissolution of the Bulk User and, to the extent allowed by law, the bankruptcy of the Bulk User.

- b. The Georgia Tort Claims Act will be the exclusive remedy for any loss or liability within its terms. However, upon demand, Bulk User will promptly reimburse the following Funds for any payments made by them, which are covered by Bulk User's obligation to indemnify: the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS").

This indemnification applies even if the State is partially responsible for the situation giving rise to the claim, but not if the State is solely responsible.

12. Disclaimer of Warranties

THE RECORDS, DATA AND SERVICES PROVIDED BY GTA UNDER THIS AGREEMENT ARE PROVIDED "AS IS". GTA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE MVR DATA AND SERVICES, INCLUDING BY WAY OF EXAMPLE AND NOT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SHOULD THE SERVICES NOT OPERATE SUBSTANTIALLY IN ACCORDANCE WITH THE TERMS STATED HEREIN, YOUR EXCLUSIVE REMEDY, AND GTA'S SOLE OBLIGATION UNDER THIS WARRANTY, SHALL BE REDUCED CHARGE FOR THE SERVICES AS SPECIFIED IN THE AGREEMENT.

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GTA DOES NOT WARRANT THAT THE DATA WILL MEET ANY REQUIREMENTS OR NEEDS YOU MAY HAVE, OR THAT THE DATA WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT ANY DEFECTS OR ERRORS IN THE DATA WILL BE CORRECTED. BY WAY OF FURTHER EXAMPLE AND NOT LIMITATION, GTA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE ACCURACY, RELIABILITY OR COMPLETENESS OF THE RECORD AND THE DATA. GTA RESERVES THE RIGHT TO WITHDRAW ANY OR ALL ACCESS TO DATA IN ITS SOLE DISCRETION AND SHALL HAVE NO LIABILITY WHATSOEVER IN CONNECTION WITH DELETION OF SUCH SERVICE. THE ENTIRE RISK AS TO THE USE OF THE DATA IS ASSUMED BY YOU. IN NO EVENT SHALL GTA BE LIABLE TO YOU OR ANY OTHER PERSON, REGARDLESS OF THE CAUSE, FOR THE EFFECTIVENESS OR ACCURACY OF THE DATA, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR OCCASIONED BY YOUR USE OF THE DATA, INCLUDING, WITHOUT LIMITATION, ANY AND ALL DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, EVEN IF GTA IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THE FOREGOING IS FOUND BY A COURT OF COMPETENT JURISDICTION TO BE INEFFECTIVE, YOU HEREBY AGREE THAT GTA'S MAXIMUM LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THE DATA AND/OR THE DMV RECORD (WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE) SHALL NOT EXCEED THE LICENSE FEES PAID BY YOU FOR THE SET OF DATA AT ISSUE.

13. Relationship of Parties

The relationship of GTA and Bulk User established by this Agreement is of licensor and licensee/independent contractors, and nothing in this agreement shall be construed: (1) to give either party the power to direct or control the daily activities of the other party or (2) to constitute the parties as principal and agent, employer and employee, franchisor and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. GTA and Bulk User understand and agree that GTA does not grant Bulk User the power or authority to make or give any agreement, statement, representation, warranty or other commitment on behalf of GTA or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of GTA, or to transfer, release or waive any right, title or interest of GTA, except as expressly allowed within this Agreement.

14. Force Majeure

The parties hereto shall not be responsible for any failure or delay in the performance of any obligations hereunder caused by Acts of God, flood, fire, war or public enemy.

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15. Waiver and Severability

No failure, delay in exercising or enforcing any right or remedy hereunder by GTA shall constitute a waiver of any other right or remedy, or future exercise thereof. If for any reason, a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable:

- a. that provision, or portion thereof, of the Agreement shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties,
- b. that provision, or portion thereof, of the Agreement shall be deemed severable, and
- c. the remainder of the Agreement shall continue in full force and effect.

16. Taxes

All federal, state, local and other taxes due, if any, under this Agreement, shall be the responsibility of the Bulk User.

17. Compliance with all Laws

Bulk User shall comply with all laws, ordinances, rules and regulations of any governmental entity pertaining to its performance pursuant to this Agreement, including, but not limited to 18 U.S.C. § 2721, and the rules and regulations as are now, and as may be promulgated by the DDS.

18. Choice of Law

This Agreement shall be governed by the laws of the State of Georgia, without application of conflicts of laws principles. The Courts of the State of Georgia, Fulton County, shall have exclusive jurisdiction and venue over any dispute, proceedings, or action arising out of or in connection with this Agreement.

19. Authority

Bulk User acknowledges it has full power and authority to enter into and perform this Agreement, and the person signing on behalf of Bulk User has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

20. Assignment

Performance under this Agreement shall not be assigned or subcontracted without the prior written consent of GTA.

21. Headings

The paragraph headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

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22. Amendments in Writing

No amendment to this Agreement shall be effective unless it is in writing and signed by authorized representatives of the parties.

23. Notice

All notices under this Agreement shall be deemed duly given upon delivery, if delivered by certified mail to the party at the address set forth as follows:

GTA:

Georgia Technology Authority
100 Peachtree Street
Suite 2300
Atlanta, Georgia 30303
Attn: Office of General Counsel

Bulk User:

24. Survival

The respective rights and obligations of the parties under **Sections 5, 6, 7, 8, 10, 11, and 12** shall survive any termination or expiration of this Agreement.

25. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations and undertakings, are superseded hereby.

IN WITNESS WHEREOF, each party, by its respective officers authorized so to do, has executed this Agreement.

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Georgia Technology Authority

Bulk User: _____

By: _____

By: _____

Name: Roosevelt Council

Name: _____

Title: Senior Finance Officer

Title: _____

Date: _____

Date: _____